IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KIMBERLEE EVANS, Plaintiff,	:	
v.	:	CIVIL ACTION
NINE WEST GROUP, INC., Defendant.	:	NO. 00-4850

Memorandum and Order

YOHN, J. April ___, 2002

Presently before the court is defendant's motion for summary judgment. For the reasons that follow, the motion will be granted.

I Background[1]

Defendant Nine West Group ("Nine West" or "defendant") is a retailer of shoes and apparel accessories. It operates numerous stores both internationally and throughout the United States, including one located in the Shops at Liberty Place in Philadelphia, Pennsylvania. As might be expected, Nine West employs a large number of people to manage the day to day

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[1] The account contained in this section is comprised of both undisputed facts and plaintiff's factual allegations. *See Skoczylas v. Atlantic Credit & Fin., Inc.*, 2002 WL 55298, at *2 (E.D. Pa. Jan. 15, 2002) ("When considering a motion for summary judgment, a court must view all facts and inferences in a light most favorable to the nonmoving party." (citing *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986))); *see also Brown v. Muhlenburg Township*, 269 F.3d 205, 208 (3d Cir. 2001) (citing *Beers-Capitol v. Whetzel*, 256 F.3d 120, 130 n.6 (3d Cir. 2001)).

operations of these establishments, a group that from November, 1995 through August, 1999 included plaintiff Kimberlee Evans ("Evans" or "plaintiff"). Evans commenced her employment with Nine West as a "manager trainee" in defendant's Gaithersburg, Maryland store, Complaint ¶ 14, and in July, 1998 was assigned to manage the Liberty Place establishment. *Id.* ¶ 15. Plaintiff's complaint reveals nothing unusual about her experience with Nine West from the inception of her employment through early 1999.

In March, 1999, plaintiff discovered that she was pregnant. Complaint ¶ 18. On March 29, 1999, she shared this news with her area sales manager, Kimberly Pagano ("Pagano"), during the course of an inquiry into defendant's policy regarding pregnancy. *Id.* ¶ 19. Pagano responded that Evans "should be concerned about her career," *id.* ¶ 20, because Pagano "did not know how [Evans] was going to manage a 1.5 million dollar store and have a baby and be a single mother." Deposition of Kimberlee Evans ("Evans Dep.") at 37. She asserted that if plaintiff did have a child, she probably would be transferred to a lower volume location, or would need to find another job. Evans Dep. at 39; Complaint ¶ 20. Pagano then asked if plaintiff had any family in the area, and upon learning that she did not, told Evans that "[Pagano] had five abortions, and [that Evans] shouldn't worry about having an abortion." Evans Dep. at 38. Pagano concluded this conversation by threatening plaintiff, stating that if Evans repeated her comments regarding her own abortions or about the likely professional consequences of motherhood, Pagano would "kill" her. *Id.* at 39-40. Although Evans did not interpret this comment literally, i.e., as threatening bodily harm, plaintiff did believe that she "would lose [her] job if [she] said anything regarding the entire conversation that [she and Pagano] had that day." *Id.* at 40; Complaint ¶ 21 (alleging that this conversation with Pagano led plaintiff to believe that

if she did not abort her fetus she would "be harassed during her pregnancy and eventually lose her position at the Philadelphia store or possibly be forced to leave Nine West altogether"). Evans ultimately opted to terminate her pregnancy, and on April 6, 1999 underwent an abortion at the Women's Center of Philadelphia. Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment ("Opposition") at 2; Nine West Group's Statement of Undisputed Facts at Exhibit F. Notably, plaintiff adamantly disclaimed the possibility that Pagano or any other Nine West employee exerted any influence over her decision to end her pregnancy. *See* Evans Dep. at 113.

On April 12, 1999, Pagano and Evans interviewed an Asian woman for the position of assistant manager of the Liberty Place store. Following the completion of this interview, Pagano privately told plaintiff that she favored the woman's candidacy because "the store was in need of diversity." Complaint ¶ 22. Specifically, Pagano stated that the Liberty Place establishment was "very intimidating," and that it needed more Caucasians[2] due to its location in Center City, Philadelphia. *Id.* Roughly two weeks later, a robbery occurred at the Liberty Place store. *Id.* ¶ 23. Pagano said in reference to this crime that she should have changed the locks of the store because its employees were "a bunch of hoodlums." *Id.* At the times of both the interview and the robbery, seven of the eight people employed at Nine West's Liberty Place location were African American. *Id.* ¶ 24.

On May 14, 2001, Evans sought to discuss with Nine West's Operations Sales

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[2] It is unclear whether this remark was made in support of the Asian woman's candidacy or was merely an unrelated statement. Common sense dictates that the latter is the correct interpretation of the comment, as a desire to employ Caucasian people would not counsel in favor of hiring a person of Asian descent.

Manager, Kim Oeding, the comments made by Pagano regarding both her ability to balance a career with the responsibilities imposed by motherhood and the other statements recounted above, which plaintiff perceived as being racially offensive. Complaint ¶ 25. Oeding was not available at the time of Evans's call, however, and plaintiff left a voice message for her. *Id.* Three days later, defendant's Regional Sales manager, Kelly McGarity, contacted Evans and queried whether Evans would prefer to discuss with her the problems she was experiencing with Pagano. *Id.* ¶ 28. Plaintiff did so, and followed up on this conversation by sending McGarity a written statement detailing the problematic course of dealing that she had experienced with Pagano. *Id.* ¶¶ 29-30. On May 21, 1999, defendant's Human Resource Manager, Rosemary Acevedo, contacted Evans regarding her complaint. *Id.* ¶ 32; Evans Dep. at 91. Acevedo stated that Pagano should not have made the statement regarding the likely professional consequences of motherhood, and that "the entire situation was merely [Evans's] perception." *Id.* ¶ 33. Acevedo offered plaintiff the opportunity to meet with both Pagano and either McGarity, Sybil Burroughs[3] or Acevedo herself, but Evans declined all of these opportunities because she felt that her relationship with Pagano was unsalvageable. Evans Dep. at 92-93. Acevedo subsequently suggested on two separate occasions that plaintiff meet with Pagano and a mediator, but Evans refused both of these offers. *See* Evans Dep. at 166-67.

On June 11, 1999, Pagano, along with Nine West's regional sales manager, made an apparently unrelated inspection of the Liberty Place store. Complaint ¶ 36. During the course of this visit it came to the attention of these individuals that the location's Inventory Movement

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[3] Burroughs was a regional trainer for Nine West. Evans had known Burroughs for two years prior to the time at which Pagano made the statements at issue, *see* Evans Dep. at 70, 76, and plaintiff consequently felt particularly comfortable dealing with her. *See id.* at 70.

Reconciliation ("IMR") was "behind."[4] *Id.* Evans explained that she had been short staffed, but was told by Pagano that her excuse was insufficient. *Id.* ¶¶ 36-37. After a confrontational exchange, plaintiff walked away, but was followed by Pagano, who told Evans that she did not appreciate her insubordination. *Id.* ¶ 37.

On June 21, 1999, plaintiff was called into Pagano's office, where plaintiff informed Pagano that she was planning to terminate her employment with Nine West in the near future. Complaint ¶ 38. On the advice of her physician, Evans subsequently applied for short term disability leave,[5] which defendant approved. *Id.* ¶¶ 39-40. On July 21, 1999, Evans's doctor recommended that she remain on sick leave until September 1, 1999. Opposition at 4. Sometime during the period of her disability leave, Evans learned that Pagano's job had been eliminated by Nine West as part of a general layoff, and that Pagano no longer worked for the company in any capacity. *See* Evans Dep. at 206. On August 27, 1999, plaintiff submitted to Nine West her resignation, indicating that at the root of this decision was her physical and psychological disability, which was attributable to the hostile work environment that had been created by Pagano. *Id.*

Based on the emotional distress and economic loss allegedly occasioned by Pagano's behavior, Evans filed on September 25, 2000 the instant complaint, which features five

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[4] Plaintiff does not specify in her Complaint or her Opposition either the precise nature of an Inventory Movement Reconciliation or what it means for an IMR to be "behind."

[5] Evans states that on May 21, 1999, she was seen by a physician, who diagnosed her as suffering from anxiety and depression. Opposition at 3. These symptoms, he concluded, were attributable to her relationship with Pagano. *Id.* On June 23, 1999, she asserts, her doctor recommended that she take a four week sick leave so as to improve her chances of recovering from these ailments. Opposition at 4.

distinct claims.[6] The first asserts a violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., based on Pagano's alleged creation of sexually hostile working environment. The second alleges that Pagano's actions violated the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 et seq. Plaintiff's third claim sounds in Pagano's alleged creation of a racially hostile working environment in violation of Title VII. Finally, her fourth and fifth claims assert violations of Pennsylvania's Human Relations Act ("PHRA"), 43 Pa. Cons. Stat. § 951 et seq., on the grounds of gender[7] and race discrimination, respectively.

On February 7, 2002, Nine West moved for summary judgment dismissing Evans's complaint in its entirety. Preliminarily, defendant contends that Evans indicated during her deposition that she has abandoned her FMLA claim. *See* Nine West Group Inc.'s Memorandum in Support of Its Motion for Summary Judgment ("Def.'s Memo.") at 1. Even if plaintiff does intend to pursue this claim, Nine West asserts, such is impossible because FMLA hostile environment claims are cognizable only "where the alleged harassment was in retaliation for the employee's request to take FMLA leave." *Id.* at 6. By her own account, Evans never indicated her desire to take leave pursuant to the FMLA. *See id.* (citing Evans Dep. at 179).

As for plaintiff's Title VII and PHRA claims, defendant asserts that the incidents

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[6] Plaintiff's fifth claim is mistakenly labeled as claim VI.

[7] Although Evans asserts that she was discriminated against on the basis of her gender, both Title VII and the PHRA technically make actionable discrimination on the basis of sex, not gender. *See* 42 U.S.C. § 2000e-2(a); 43 Pa. Cons. Stat. § 955. Although the Third Circuit has treated the concepts of "gender" and "sex" interchangeably, *see Durham Life Ins. Co. v. Evans*, 166 F.3d 139, 148 (3d Cir. 1999), it also has labeled "sexual misconduct and . . . gender-based mistreatment . . . as sex discrimination." *Id.* As such, I will construe the relevant portions of plaintiff's complaint as asserting Title VII and PHRA claims based on sex discrimination.

on which these claims are based are insufficiently severe and pervasive to rise to the level of a violation of either of these statutes. Def.'s Memo. at 1, 7-18. This is so, Nine West avers, whether the bases for these claims are considered individually or as amalgamated. *See id.* at 1, 11-14. Defendant argues finally that even if Pagano's comments are actionable under Title VII and the PHRA, Nine West is not vicariously liable for this harassment because it took no tangible employment action against plaintiff, it exercised reasonable care to prevent and correct the behavior in question, and because Evans failed to avail herself of the corrective opportunities it offered. *See id.* at 1, 18-25.

II Legal Standard

Summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Indeed, it is insufficient at the summary judgment stage of a litigation for the nonmoving party to rely on bare assertions–for example, those contained in a complaint–as a means of demonstrating the existence of a genuine factual dispute. *See Fireman's Ins. Co. of Newark v. DuFresne*, 676 F.2d 965, 969 (3d Cir. 1982) (citing Fed. R. Civ. P. 56(e)). Importantly, the court's task is limited to determining whether there is a genuine, material factual issue that requires a trial; if such a disputed factual issue does exist, the court is not to resolve it. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986). In order to determine whether summary judgment is appropriate in this particular case, all of the facts delineated above are stated in the light most favorable to the plaintiff as the non-moving party.

See Saldana v. Kmart Corp., 260 F.3d 228, 232 (3d Cir. 2001).

III Discussion

A. The FMLA Claim

Nine West's contention regarding Evans's abandonment of her FMLA claim is well-founded. Indeed, although this claim is advanced in plaintiff's complaint, its viability is not defended in her opposition to defendant's motion. Under analogous circumstances, courts both within and beyond the Third Circuit routinely have held the claim at issue to have been abandoned. *See, e.g.*, *Estate of Henderson v. City of Philadelphia*, 1999 WL 482305, at **16-17 (E.D. Pa. July 12, 1999) ("[P]laintiffs appear to have abandoned th[e] allegation [in question] as they do not mention this claim as a basis for denying defendants' motion for summary judgment"); *Wright v. Montgomery County*, 1998 WL 962100, at *4 (E.D. Pa. Dec. 22, 1998) ("In the instant matter, Plaintiff failed to respond to Defendants' Motion for Summary Judgment concerning all of Plaintiff's State Law Tort Claims . . . . The Plaintiff, however, responded to Defendants' Motion . . . regarding his constitutional claim. By choosing to defend his constitutional claim, and not his state law claims, it is apparent that the Plaintiff has elected to abandon his state law tort claims." (citing *LeBaud v. Frische*, 156 F.3d 1243, 1998 WL 537504, at *3 (10th Cir. Aug. 20, 1998) and *Haroco, Inc. v. American National Bank and Trust Company of Chicago*, 747 F.2d 384, 402 n.21 (6th Cir. 1984))).

Moreover, even disregarding the abandonment issue, it is evident that plaintiff's allegations do not state a cognizable claim under the FMLA. That statute guaranties the right of an employee to take up to twelve weeks of leave from work within a given twelve month period

to care for a newborn child. *See* 29 U.S.C. § 2612(a)(1)(A). It also provides that it is unlawful for an employer to in any way "interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided" by § 2612. 29 U.S.C. § 2615(a)(1). It is axiomatic, however, that to state a FMLA claim, a plaintiff must allege either that her employer retaliated against her for taking the leave to which she is entitled or that she expressed a desire or intent to avail herself of the FMLA's provisions and that her employer prevented her from doing so. *See generally Alifano v. Merck & Co., Inc.*, 175 F. Supp.2d 792, 794-95 (E.D. Pa. 2001). In this case, Evans never took FMLA leave, and is thus prevented from stating a retaliation claim. Moreover, plaintiff explicitly stated during her deposition that she did not believe that anyone at Nine West treated her differently because of any desire she possessed to take leave pursuant to the FMLA. *See* Evans Dep. at 179. In addition, she testified at her deposition that she could not recall even mentioning the possibility of her taking a leave of absence or expressing a desire to avail herself of the FMLA's protections. *See id.* As such, I conclude that plaintiff cannot possibly have stated a viable FMLA claim of any variety. Accordingly, the court will grant defendant's motion for summary judgment with respect to this claim.

B. The Race and Sex Discrimination Claims

Although the court will address the substance of Evans's race and sex discrimination claims separately, the standards pursuant which both of these claims must be adjudicated are identical. Accordingly, I will begin this discussion by setting forth these evaluative principles.

Preliminarily, it is important to note not only that claims sounding in race and sex

discrimination are actionable under both Title VII and the PHRA, but moreover that these statutes are typically interpreted as being in pari materia in terms of the standards to be employed in determining whether their substantive mandates have been violated. *See, e.g.*, *Weston v. Pennsylvania*, 251 F.3d 420, 425 n.3 (3d Cir. 2001) ("The proper analysis under Title VII and the Pennsylvania Human Relations Act is identical, as Pennsylvania courts have construed the protections of the two acts interchangeably.") (citations omitted); *Bianchi v. City of Philadelphia*, 183 F. Supp. 726, 734 n.4 (E.D. Pa. 2002); *Kroptavich v. Pennsylvania Power & Light Co.*, ___ A.2d ___, 2002 WL 453213, at *4 (Pa. Super. Ct. Mar. 26, 2002). Accordingly, the court's disposition of defendant's motion with respect to Evans's Title VII claims will dictate the propriety of summary judgment in the context of plaintiff's PHRA claims as well. *See Goosby v. Johnson & Johnson Med., Inc.*, 228 F.3d 313, 317 n.3 (3d Cir. 2000) ("The analysis required for adjudicating [the plaintiff's] claim under PHRA is identical to a Title VII inquiry . . . and we therefore do not need to separately address her claim under the PHRA.") (citation omitted).

To prevail on a Title VII claim sounding in the creation of a racially or sexually hostile working environment, a litigant must establish, "'by the totality of the circumstances, the existence of a hostile or abusive *environment* which is severe enough to affect the psychological stability of a minority employee.'" *Andrews v. City of Philadelphia*, 895 F.2d 1469, 1482 (3d Cir. 1990) (quoting *Vance v. Southern Bell Tel. & Tel. Co.*, 863 F.2d 1503, 1510 (11th Cir. 1989)) (emphasis original). This inquiry has been refined by the Third Circuit into a five-pronged test, pursuant to which plaintiff must demonstrate: "'(1) [that she] suffered intentional discrimination

because of [her race or] sex, (2) [that] the discrimination was pervasive and regular,[8] (3) [that] the discrimination detrimentally affected [her], (4) [that] the discrimination would detrimentally affect a reasonable person of the same [race or] sex in that position, and (5) the existence of *respondeat superior* liability.'" *Weston*, 251 F.3d at 426 (quoting *Andrews*, 895 F.2d at 1482); *see also Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1081 (3d Cir. 1996).

1. The Race Discrimination Claim

The incidents that give rise to plaintiff's racially hostile workplace claim are as follows: (1) Pagano stated that Nine West's Liberty Place store needed more Caucasian employees in order to render its workforce more diverse and because its current employees were intimidating; (2) following the robbery, Pagano stated that the people who worked at the store–all but one of whom were African American–were "a bunch of hoodlums"; and (3) Pagano told

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[8] I recognize that our Court of Appeals's requirement that the conduct at issue be both severe *and* pervasive may vary somewhat from the holding of the Supreme Court in *Meritor Savings Bank, FSB v. Vinson* that "[f]or sexual harassment to be actionable, it must be sufficiently severe *or* pervasive to alter the conditions of [the victim's] employment and create an abusive working environment." 477 U.S. 57, 67 (1986) (emphasis added); *see also Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 752 (1998) (referring to hostile environment claims as requiring a demonstration of "harassment that is severe or pervasive"). *See Spain v. Gallegos*, 26 F.3d 439, 449 n.14 (3d Cir. 1994) (noting this divergence). Indeed, as stated by another district court within this circuit, "a 'regular and pervasive' requirement [is] inconsistent with developments in Supreme Court Title VII jurisprudence, and . . . improperly 'bar[s] actions based on a single, extremely severe incident or, perhaps, even those based on multiple but randomly occurring incidents of harassment.'" *Newsome v. Admin. Office of Courts of N.J.*, 103 F. Supp.2d 807, 817 n.12 (D.N.J. 2000) (quoting *Lehmann v. Toys 'R' Us, Inc.*, 626 A.2d 445, 455 (N.J. 1993)).

However, to the extent that a divide does exist between the standards articulated by the Supreme Court and our Court of Appeals, this is a chasm that I need not bridge here. This is so because defendant's motion must be granted even assuming that a single, especially severe incident can give rise to Title VII liability.

Evans that her excuse for being behind on the IMR was insufficient and that she was being insubordinate, and subsequently asked her whether she was planning to keep her job. *See* Opposition at 6-8.

I conclude that the facts asserted by plaintiff do not rise to the level of actionable discrimination along racial lines. This is so for at least two reasons. First, although it is unnecessary for a Title VII defendant to use words that manifest overt animus in order to create a hostile workplace, *see Aman*, 85 F.3d at 1081-83, some of the comments on which Evans focuses cannot reasonably be construed as evincing any sort of racial antipathy toward her. Such comments are insufficiently "severe" to warrant Title VII liability. *See generally Wiley v. Citibank, N.A.*, 2001 WL 357322, at *5 (S.D.N.Y. Mar. 31, 2001) (indicating that conduct that is not facially racially offensive or motivated by racial animus is "race neutral," and thus not a viable basis for a hostile work environment claim under Title VII). For example, consider Pagano's comment that she favored the candidacy of the Asian interviewee for the assistant manager position because she wanted to increase the store's diversity. Though on its face this comment is racially oriented, it is not racially discriminatory. Indeed, there is nothing within the plain meaning of Pagano's words that in any way evinces racial animus directed at Evans. Moreover, plaintiff has presented no evidence that the circumstances under which this statement was made transform it from a positive comment regarding the desirability of a diverse workplace into an expression of racial hostility.

By contrast, Pagano's statement that she wanted to hire the Asian woman because the store's current staff was intimidating could be construed as racially offensive. The implication of this comment is that the way to rectify the establishment's intimidating

atmosphere was to populate the store with non-blacks, not with non-threatening people. The flip-side of this statement is that the character of the store's atmosphere was attributable to its being populated with African Americans, including plaintiff. Put differently, it is not unreasonable for plaintiff to interpret this comment as indicating that, according to Pagano, she is intimidating by virtue of the color of her skin. Accordingly, I will consider this comment as manifesting racial animosity.

As for Pagano's statement that the Liberty Place employees were "a bunch of hoodlums," the word "hoodlum" is, on its face, race neutral. *See generally Ewing v. Coca-Cola Bottling Co.*, 2001 WL 767070, at *7 (S.D.N.Y. June 25, 2001); Webster's Third New International Dictionary 1088 (3d ed. 1981) (defining the term as referring to a "thug, ruffian, [or] mobster"). Indeed, more than one court has used the term to refer to one or more Caucasian individuals. *See, e.g.*, *R.A.V. v. City of St. Paul*, 505 U.S. 377, 415 (1992) ("I see no First Amendment values that are compromised by a law that prohibits hoodlums from driving minorities out of their homes by burning crosses on their lawns . . . ."); *Korablina v. I.N.S.*, 158 F.3d 1038, 1042 (9th Cir. 1998) (referring to a particular group of Ukranians[9] as "anti-Semitic hoodlums"). Nonetheless, if uttered in an environment otherwise marked by abundant racial animosity or under circumstances that render it an expression of racial antipathy, this term can constitute "harassment motivated by racial animus." *Ewing*, 2001 WL 767070, at *7. In this case, Pagano said that the employees of the Liberty Place store were "a bunch of hoodlums" immediately upon learning that the store had been robbed, and that all indications were that the

[9] While the Ninth Circuit did not explicitly specify in *Korablina* the race of the Ukranians in question, I will not hesitate to assume that they were Caucasian.

thief was an insider. *See* Evans Dep. at 51, 54-55. Unquestionably, a person who robs his or her own place of employment qualifies as a hoodlum. Plaintiff has not presented sufficient evidence that Pagano's comment could reasonably be interpreted as indicating a belief that the employees of the Liberty Place store were hoodlums because they were black, as opposed to a belief that they were hoodlums because they were prone to rob their own store. Indeed, this highlights an important, though often fine, distinction within the universe of Title VII jurisprudence. The very fact that, for example, an African American is insulted does not render that statement actionable; put simply, there is a significant doctrinal difference between insulting a black person and insulting a black person *because* she is black or on the basis of some race-specific characteristic. Accordingly, I conclude that Pagano's "hoodlums" statement does not evidence animus of a racial variety.

Similarly, there is nothing racially offensive about Pagano's admonitions that plaintiff's excuse for being behind on the IMR was insufficient and that she was being insubordinate, or about asking Evans whether she was planning to retain her job. It is clear that these verbalizations are facially race neutral. Moreover, plaintiff has not established that, taken against the background she describes, these comments actually were racially derogatory in character as opposed to being honest criticisms of her performance. As such, they fail as bases for a hostile environment claim under Title VII.

While plaintiff argues that these admonitions are actionable because they were made in retaliation against Evans for complaining to Pagano's supervisors about her previous comments, *see* Opposition at 8, no Title VII retaliation claim–as distinct from a hostile environment claim–is possible here. This is so for several reasons, including the fact that in

order to state a viable retaliation claim, the plaintiff must demonstrate that her employer took some tangible, adverse employment action against her. *See Abramson v. William Patterson College of New Jersey*, 260 F.3d 265, 286 (3d Cir. 2001) (setting forth the test to be employed in evaluating Title VII retaliation claims). Yet by Evans's own account, neither Pagano nor anyone else within Nine West's managerial hierarchy ever imposed any adverse employment decision on plaintiff.[10] Mere discipline, without any corresponding change in the terms or conditions of employment, does not qualify as an "adverse employment action" under Title VII. *See Cardenas v. Massey*, 269 F.3d 251, 263 (3d Cir. 2001) (holding that an adverse employment action is one that is "'serious and tangible enough to alter an employee's compensation, terms, conditions, or privileges of employment'" (quoting *Robinson v. City of Pittsburgh*, 120 F.3d 1286, 1300 (3d Cir. 1997)).

The second basis for my conclusion that the racially offensive comments allegedly made by Pagano do not give rise to Title VII liability is that, even assuming that all of these statements evinced racial animosity, they were insufficiently pervasive to render them actionable under Title VII.[11] It is worth reiterating here that the focus of the Title VII analysis is on the extent to which racial or sexual hostility pervades the workplace environment as a whole.

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[10] To the extent that plaintiff contends that she was constructively discharged as a consequence of Pagano's conduct, and that the "adverse employment action" requirement is thereby satisfied, I reject this proposition for the reasons delineated, *infra*.

[11] Although I remain cognizant of the possibility that, under the Supreme Court's holding in *Onacle v. Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 81 (1998), a single, incredibly severe incident could warrant relief under Title VII, nothing within plaintiff's allegations of race-based discrimination even approaches the requisite degree of severity. As such, the incidents on which Evans does focus must be prevalent in order to render them actionable under that statute.

Accordingly, in order for offensive comments to generate liability under this statute, a litigant must establish that "the conduct in question . . . create[s] an 'objectively hostile or abusive work environment–an environment that a reasonable person would find hostile–and an environment the victim-employee subjectively perceives as abusive or hostile.'" *Weston*, 251 F.3d at 426 (quoting *Harris v. Forklift Sys., Inc*., 510 U.S. 17, 21-22 (1993)).

In other cases decided by various courts of appeals and by district courts within this circuit, allegations based on a similar number of comparably offensive comments or gestures have routinely been held not to satisfy Title VII's pervasiveness requirement.[12] *See, e.g.*, *Richardson v. New York State Dep't of Corr. Serv.*, 180 F.3d 426, 439 (2d Cir. 1999) (holding that "isolated, minor episodes of harassment do not merit relief under Title VII") (citation omitted); *Konstantopoulos v. Westvaco Corp.*, 112 F.3d 710, 716 (3d Cir. 1997); *Weston v. Pennsylvania*, 2001 WL 1491132, at *12 (E.D. Pa. Nov. 29, 2001) (three offensive comments within a month, coupled with another offensive comment three years later insufficiently pervasive); *Saidu- Kamara v. Parkway Corp.*, 155 F. Supp.2d 436, 439-40 (E.D. Pa. 2001) (four specific incidents over nearly one and one-half years not frequent enough to create hostile work environment); *Bonora v. UGI Utilities*, 2000 WL 1539077, at **3-4 (E.D. Pa. Oct.18, 2000) (supervisor's ten incidents of harassing conduct over two years not frequent enough to create hostile work environment); *Arasteh v. MBNA America Bank, N.A.*, 146 F. Supp.2d 476, 495 (D.

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[12] While some of the cases cited in support of this proposition concern the alleged creation of a sexually hostile workplace, I reiterate that the pervasiveness requirement applies in this context in precisely the same way as it does with regard to racially hostile workplace claims. *See Price Waterhouse v. Hopkins*, 490 U.S. 228, 243 n.9 (1989), *superseded by statute on other grounds*, 42 U.S.C. §§ 2000e-2(m) and 2000(e)-5(g)(2)(B); *Cardenas v. Massey*, 269 F.3d 251, 261 n.6 (3d Cir. 2001).

Del. 2001) (holding that where the defendant's employee rubbed the plaintiff's legs and stared at her breasts, but did not do so often, the plaintiff's Title VII hostile work environment claim was not actionable). *Cf. Roberts v. University of Pennsylvania*, 2001 WL 1580304, at *6 (E.D. Pa. Dec. 11, 2001) (holding actionable under Title VII a pattern of 20 incidents of sexual harassment over a two year period that included glares, laughter, cursing at the plaintiff, making vulgar comments to her, two incidents wherein physical force was used against her, and additional threats of physical force).

Indeed, as in these and a veritable slew of other cases, Pagano's conduct simply did not "permeate [the workplace] with discriminatory intimidation, ridicule, and insult." *Harris*, 510 U.S. at 21. Consequently, I conclude that Title VII's pervasiveness requirement has not been satisfied by Evans with respect to her racially hostile work environment claim. As stated above, this conclusion applies with equal force to Evans's analogous PHRA claim. Accordingly, defendants' motion will be granted with respect to each of these claims, and it is thus unnecessary for the court to undertake an analysis of the remaining criteria set forth in *Weston*.

2. The Sex Discrimination Claim

Evans's claim of a sexually hostile workplace is based on Pagano's comments that 1) Evans should be concerned about her career with Nine West because Pagano did not know how plaintiff would be able to balance her professional and parental responsibilities; 2) Evans probably would be transferred to a lower volume establishment or would be forced to find another job if she chose not to terminate her pregnancy; 3) plaintiff "shouldn't worry about

having an abortion"; and 4) if Evans repeated any of these statements Pagano would "kill" her. Evans Dep. at 37-40. These comments are significantly more troubling than those on which plaintiff's racially hostile work environment claim is based, as their implication can be that Evans had a choice: either terminate her pregnancy or lose her job. Importantly, under Title VII, sex-based discrimination encompasses pregnancy-based discrimination. *See* 42 U.S.C. 2000e(k). As such, Pagano's alleged comments represent a most egregious form of sex discrimination, and I will assume without deciding that they are sufficiently severe so as to give rise to Title VII liability in and of themselves. I also will assume that these comments detrimentally affected Evans–i.e., that they caused her emotional consternation, and that she was forced to incur medical expenses as a result of Pagano's statements–and that they would have entailed a similar effect on any reasonable woman in plaintiff's position. *See Weston*, 251 F.3d at 426.

Yet even making all of these assumptions, I must conclude that Evans is legally precluded from recovering under Title VII based on her sexually hostile workplace claim. This is so because she has not demonstrated the existence of a genuine issue of fact as to whether Nine West can be held vicariously liable for the statements made by Pagano. Under a doctrine that has come to be known as the *Ellerth*/*Faragher* affirmative defense, an employer that has taken no tangible adverse employment action against an employee cannot be held liable for the creation of a hostile work environment by that employee's supervisor if certain conditions are manifest. As explained by the Supreme Court:

> An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or

> successively higher) authority over the employee.[13] When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence . . . . The defense comprises two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise . . . . No affirmative defense is available, however, when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment.

Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 765 (1998); *see also Faragher v. City of Boca Raton*, 524 U.S. 775, 807-08 (1998). The rationale underlying this doctrine stems from a rudimentary tort law principle, namely that a victim who has the opportunity to mitigate harm possesses an affirmative obligation to do so, and that the failure to fulfill this obligation will curtail her ability to recover for the avoidable injury that she suffers. *See Faragher*, 524 U.S. at 807 ("If the victim could have avoided harm, no liability should be found against the employer who had taken reasonable care, and if damages could reasonably have been mitigated no award against a liable employer should reward a plaintiff for what her own efforts could have avoided.").

In determining the applicability of this defense in the present matter, then, a threshold question to be resolved is whether any tangible adverse employment action ever was taken by Nine West against Evans. Plaintiff avers that this question must be answered affirmatively–and that the *Ellerth/Faragher* doctrine consequently is unavailable to defendant–because she was constructively discharged by virtue of Pagano's statements. *See* Opposition at 12-13. At the outset, it is worth noting that although other courts have split on the question of whether a constructive discharge constitutes a tangible adverse employment action,

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[13] There is no question that Pagano possessed such authority over Evans.

the Third Circuit explicitly has declined to resolve this issue. *See Caridad v. Metro-North Commuter R.R.*, 191 F.3d 283, 294 (2d Cir. 1999) (holding that "constructive discharge does not constitute a 'tangible employment action' as that term is used in *Ellerth* and *Faragher*"); *Cherry v. Menard, Inc.*, 101 F. Supp.2d 1160, 1171-75 (N.D. Iowa 2000) (explicitly disagreeing with the conclusion reached by the *Caridad* court); *see also Cardenas*, 269 F.3d at 266 n.10 (reserving this question for resolution in the first instance by a district court). I find it unnecessary to undertake this legal inquiry, however, because I conclude that Evans was not constructively discharged.

In order to establish that she was constructively discharged, plaintiff must demonstrate that Nine West "knowingly permitted conditions of discrimination in employment so intolerable that a reasonable person subject to them would resign." *Goss v. Exxon Office Sys. Co.*, 747 F.2d 885, 888 (3d Cir. 1984). In *Clowes v. Allegheny Valley Hosp., Inc.*, our Court of Appeals delineated several adverse actions that commonly are cited by employees claiming that they were constructively discharged, including threats of discharge, being urged to resign or retire, demotion or reduction in pay or benefits, involuntary transfer to a less desirable position, alteration of job responsibilities and being given unsatisfactory job evaluations. *See* 991 F.2d 1159, 1161 (3d Cir. 1993). Yet as the Third Circuit subsequently clarified, these are not criteria necessarily satisfied by the party asserting a constructive discharge, but rather are merely examples of actions that are indicative of such a de facto termination. *See Duffy v. Paper Magic Group, Inc.*, 265 F.3d 163, 168 (3d Cir. 2001); *Konstantopoulos*, 112 F.3d at 718 n.2.

In this case, I conclude that plaintiff has failed to demonstrate the existence of a genuine issue of fact as to whether any reasonable woman in her position would have resigned.

To reiterate, after Pagano allegedly expressed her concerns regarding Evans's ability to be both a mother and a store manager, and informed plaintiff of her likely demotion or termination, Evans continued working for over a week until April 6, 1999 when she had an abortion. She subsequently remained as manager of the Liberty Place store until she took disability leave in late June, 1999.[14] When Evans complained about Pagano's conduct to various Nine West management personnel during this intervening period, *see, e.g.*, Evans Dep. at 79-81, Nine West responded in a conscientious manner, and asked plaintiff on numerous occasions to meet with Pagano and one of several available mediators to resolve the conflict that she was experiencing. *See id.* at 92-93, 166-67. Thus, it is clear that plaintiff was being treated as a valued member of Nine West's workforce for several months prior to her taking disability leave.[15] Moreover, while still on leave from the Liberty Place store, but before submitting her resignation, Evans learned that Pagano–the only individual with whom plaintiff ever had experienced a problematic course of dealing, and the sole source of all of the allegedly discriminatory actions on which the instant action is based–no longer was within Nine West's employ. *See id.* at 206-07.

Given these circumstances, no reasonable juror could conclude that any reasonable person in plaintiff's position would have resigned from Nine West. In terms of the

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[14] Plaintiff's decision not to resign immediately, or even shortly after, Pagano made the statements on which her sex discrimination claim is based may well have been influenced by the fact that Evans was not confronted with Pagano on a regular basis. *See* Evans Dep. at 101-02 (indicating that she saw Pagano between once a week and once every two weeks). Importantly, Pagano was the only individual who ever subjected plaintiff to sex-based discrimination. Thus, considered as a whole, plaintiff's work environment was not laden with such discriminatory conduct.

[15] As indicated, *supra*, plaintiff does not alleged that she was treated otherwise prior to March 29, 1999.

Clowes factors, while Evans may well have been threatened with discharge by Pagano in March, 1999, it was certain at the time that she resigned that plaintiff would not be discharged by Nine West. Indeed, the efforts undertaken by Nine West to resolve amicably Evans's dispute with Pagano are indicative of the company's desire that plaintiff continue her association with Nine West. She never was demoted nor did her job responsibilities ever change during the period in question. Moreover, although Evans asserts that she was informed that her excuse for being behind on the IMR was insufficient, this is distinguishable from receiving a negative official performance evaluation. In sum, then, plaintiff's allegations reveal that at the time that Evans resigned from Nine West she had experienced only one episode of sex-based discrimination over the course of roughly fourteen months, and none within the five months immediately preceding her resignation. Furthermore, while plaintiff endured no sexually discriminatory or harassing conduct between March 29, 1999 and the conclusion of her employment, during this period she did refuse several offers made by Nine West to mediate her dispute with Pagano.[16]

In several cases featuring analogous factual circumstances, the Third Circuit has concluded that no constructive discharge transpired. *See generally Duffy*, 265 F.3d at 169 (holding that the plaintiff had not been constructively discharged where she demonstrated that

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[16] These facts differ from those at issue in *Aman*, wherein the Third Circuit rejected the blanket proposition that a claim of constructive discharge is unavailable as a matter of law to a plaintiff who remained at her job for four months following the point at which the conditions of her employment allegedly became intolerable. In that case, those conditions changed dramatically during these four months, as during this period the plaintiff was informed that she was going to be formally reprimanded, her co-workers were instructed to compile lists of complaints against her. Additionally, the plaintiff's white supervisor commented during this time that "the blacks are against the whites" (the plaintiff being black), "and that those who didn't like it should leave." 85 F.3d at 1085. Evans, unlike the *Aman* plaintiff, did not suffer such escalating–or even continuing–discriminatory conduct between March 29, 1999 and the time of her resignation.

her work environment was "stressful, but not unbearable" from an objective standpoint (citing *Connors v. Chrysler Fin. Corp.*, 160 F.3d 971, 975 (3d Cir. 1998))); *Connors*, 160 F.3d at 974-75 (basing, in significant part, a holding that no constructive discharge had transpired on the facts that 1) any hostile work environment that the plaintiff ever had experienced had ceased to exist long before he opted to resign; and 2) that the plaintiff had not "attempted to explore alternatives before resigning"); *Konstantopoulos*, 112 F.3d at 718 (holding that where the plaintiff had been subjected to a hostile work environment during her first period of employment, but had not been exposed to such conditions during a temporally removed second period of employment, she necessarily could not substantiate her claim that the cessation of this second period actually stemmed from a constructive discharge caused by this previous hostility).[17]

Indeed, a comparison of plaintiff's allegations with those made by the plaintiff in *Goss v. Exxon Office Sys. Co.*, 747 F.2d 885 (3d Cir. 1984), the case in which the Third Circuit first approved of predicating Title VII liability on a showing that the plaintiff had been constructively discharged, is instructive. In *Goss*, the plaintiff was a saleswoman for Exxon Office Systems who alleged that her supervisor had "interrogated her about whether she intended to have a family." 747 F.2d at 888. Goss responded that she intended to both be a mother and a saleswoman, and she became pregnant shortly thereafter. *See id.* Upon learning of this, her

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[17] Although distinguishable, the facts presented in *Konstantopoulos* are notably similar to those currently at bar. Although Evans was employed by Nine West for one continuous period, unlike the *Konstantopoulos* plaintiff who was employed during two distinct stints, in both cases there was a prolonged temporal divide between the period during which the plaintiff allegedly was subjected to a sexually hostile work environment and the resignation that allegedly stemmed from a constructive discharge. In both cases, this intervening period was discrimination-free. Accordingly, the conclusion of the *Konstantopoulos* court that the plaintiff was precluded from advancing her constructive discharge claim is persuasive in the instant matter as well.

supervisor "expressed his doubts about [Goss's] ability to combine motherhood and a career." 747 F.2d at 888. Goss subsequently had a miscarriage, and she returned to work without missing any time. *See id.* Later that year the plaintiff again became pregnant, and after discovering this her supervisor "questioned her further about the dual responsibilities of a career and motherhood, to such an extent that she began crying," and informed her that he was thinking of removing her from one of her few major accounts. *Id.* Goss then suffered a second miscarriage, and missed six days of work. *See id.* When she returned, she found that her sales territory had been transferred to a male salesperson. *See id.* Goss complained to Exxon management as per the company's "open door" policy, and ultimately was assigned a new territory. She was told to either accept this new assignment or resign. Under these circumstances, the Court of Appeals found that the district court's conclusion that Goss had been constructively discharged was factually supported.

Like Goss, Evans was subjected by Pagano to questions regarding her ability to balance motherhood and her professional responsibilities, and was told that she probably would be transferred to a lower volume store or would need to find a new job. Yet unlike the facts presented in *Goss*, nothing that transpired subsequently in this case confirmed the accuracy of Pagano's prediction. Quite the contrary, not only was Evans never stripped of any professional responsibility or benefit as Goss was, but further, Nine West management affirmatively indicated during the ensuing months that Pagano's comments did not represent the likely consequences of motherhood for plaintiff. *See* Complaint ¶ 33. Whereas a contrary reaction by Nine West–that is, a confirmation of the correctness of Pagano's perception via some tangible diminution in plaintiff's responsibilities, professional opportunities, compensation or benefits–would present a

factual scenario akin to that at issue in *Goss*, such is not the case in the present matter. This distinction is dispositive with respect to Evans's allegation of constructive discharge.

This conclusion is further buttressed by the fact that plaintiff herself indicated during her deposition that her preferred resolution to the situation with Pagano was not to resign, but rather to "have another district manager." Evans Dep. at 93; *see also id.* at 177 (plaintiff indicating that "all [she] wanted was to have her "store moved out of Kim Pagano's territory"). Quite significantly, when Evans resigned from Nine West, her desire had been realized; Pagano no longer was her supervisor, and, as stated, no longer worked for Nine West in any capacity. *See id.* at 206. Because the sole source of any discrimination that plaintiff suffered no longer posed any threat of inflicting such harm unto her, it is not the case that any reasonable person in Evans's position would have resigned from Nine West. Stated alternatively, it cannot reasonably be said that Evans had no choice but to resign. *See, e.g.*, *Connors*, 160 F.3d at 976 ("'Intolerability . . . is assessed by the objective standard of whether a "reasonable person" in the employee's position would have felt *compelled* to resign,'–that is, whether he would have had no choice but to resign.") (emphasis original).

Because plaintiff does not allege that any adverse employment action other than a constructive discharge ever was taken against her by Nine West, I conclude that defendant has surmounted this initial hurdle to the assertion of a *Ellerth*/*Farragher* defense.

I therefore turn to the second showing necessarily made by Nine West, namely that it exercised reasonable care to prevent any sex discrimination against plaintiff. I have little trouble concluding that defendant did so in this case. Not only did it respond quickly to Evans's complaints regarding Pagano, *see, e.g.*, Evans Dep. at 79 (stating that Kelly McGarity called her

within a "couple of days" of, or possibly the same day as, plaintiff's call to Kim Oeding), but it also took the initiative on several occasions to attempt to begin a mediation process between Pagano and Evans. *See* Evans Dep. at 92-93 and 166-67. Under the circumstances, given that there was no continuing harassment or any allegation thereof, it is difficult to see what more Nine West could have done to address the situation.

As for the third component of the *Ellerth*/*Farragher* defense, Evans articulated her rationale for refusing to avail herself of the remedial opportunities offered by Nine West, i.e., for declining to meet with Pagano and either Acevedo, McGarity, Burroughs or any other meditor, as follows:

> Because as far as me and Kim sitting down and talking and all this water under the bridge, our relationship, it was not able to salvage that relationship. I could not work with her. I could not be around her. So, I wanted to have another district manager. I just didn't want her to be my supervisor anymore.

Evans Dep. at 93. During the course of her deposition, plaintiff confirmed that she had refused the opportunities for mediation that Nine West had provided based on her perception that the process would not be helpful:

> Q: Do you think that you had some obligation to try to sit down and at least go through the process that Rosemary [Acevedo] had suggested before resigning?
>
> A: No.
>
> Q: Why not?
>
> A: Because the process that she had designed wasn't in my benefit. Me and Kim talking and sitting down, I don't think that it was going to be effective. And I had already spoke to Rosemary, and she seemed to not believe anything that I had to say. So, I didn't feel like it was productive for me to sit down and talk with them, and they didn't believe anything that I had to say.

Id. at 174;*see also id.* at 176 (repeating this explanation).[18]

This rationale may be contrasted with that offered by the plaintiff in *Cardenas*, wherein the Third Circuit held that a genuine factual question existed with respect to the reasonableness of the plaintiff's refusal to avail himself of the corrective procedures made available by his employer. *See* 269 F.3d at 267. In that case, the plaintiff had complained informally to various supervisors about harassment he allegedly was experiencing, but was told that in order to spur any corrective action he needed to file a formal complaint. *See id.* The plaintiff did not wish to take this step, however, "for fear of aggravating the situation or branding himself a troublemaker." *Id.* Although the Court of Appeals did not hold that the plaintiff's refusal to file a formal complaint on these grounds was reasonable, it determined that a reasonable factfinder could so conclude, given the circumstances presented. In the instant matter, by contrast, the rationale offered by Evans for her refusal of Nine West's offer of mediation–viz., that she did not believe that it would be fruitful–is categorically unreasonable. *See, e.g., Gawley*

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[18] Plaintiff was questioned at least four times during her deposition as to her reason(s) for refusing Nine West's various offers of mediation. On one of these occasions, she implied that she refused one of these offers because Nine West would not permit her to have a lawyer present for the proceeding. *See* Evans Dep. at 166-67. I conclude, however, that this statement does not create a genuine issue of fact as to plaintiff's rationale for declining mediation. This is so for two reasons. First, Evans does not present evidence indicating that she requested her attorney to be present at the mediation, or that Nine West refused such a request. Rather, she states only that she would not attend the mediation without having an attorney present. *Compare, e.g.*, *Cardenas*, 269 F.3d at 267 ("[The plaintiff] asserts that the investigators declined to re-interview him when he insisted that his lawyer be present but instead adopted [the supervisor's innocuous] explanation of the alleged ethnic slurs . . . ."). Second, and far more significantly, of the four answers provided by Evans when questioned as to her reasons for declining her employer's offer of dispute resolution, this response contradicts the other three, which uniformly indicate that plaintiff refused mediation because she believed that it was pointless. Taken against this background, this one contrary assertion is insufficient to create a genuine issue of fact such as would preclude the court from granting defendant's motion.

v. Indiana Univ., 276 F.3d 301, 312 (7th Cir. 2001) (holding that the plaintiff's "neglect" of her employer's formal dispute resolution procedures was unreasonable, despite an extensive history of informal complaints regarding discrimination she allegedly had suffered); *Mathers v. Sherwin Williams Co., Inc.*, 2000 WL 311030, at *10 (E.D. Pa. Mar. 27, 2000) (confirming that the plaintiff's "numerous refusals of [the defendant employer's] requests for her to provide input as to how [the defendant] could rectify the situation" could be perceived as "an unreasonable failure to take full advantage of the corrective opportunities provided by" the defendant); *Morris v. SEPTA*, 1999 WL 820457, at **5-6 (E.D. Pa. Sept. 28, 1999) (holding that where the plaintiff had complained informally to his supervisor, a union representative, and psychological counselors about harassment he was suffering, such was an inadequate substitute for the more formal dispute resolution procedures made available by his employer, and thus that his failure to avail himself of those procedures was unreasonable). Accordingly, the third requirement of the *Ellerth*/*Faragher* doctrine has been satisfied in this case as well.

Because each prerequisite to the assertion of this defense has been fulfilled by defendant, Nine West cannot be liable under Title VII for the sex discrimination allegedly perpetrated by Pagano against plaintiff. For the same reason, Evans's PHRA claim of a sexually hostile workplace also fails. *See Bacone v. Philadelphia Hous. Auth.*, 2001 WL 748117, at *3 (E.D. Pa. June 27, 2001) (applying the *Ellerth*/*Faragher* doctrine in the context of a sex discrimination claim brought under the PHRA).

IV Conclusion

Based on the foregoing analysis, I must conclude that Evans's FMLA claim has

been abandoned, and in any event is non-justiciable. Moreover, the alleged incidents of discrimination on which plaintiff's racially hostile workplace claim is based are insufficiently severe and pervasive to be actionable under either Title VII or the PHRA. While her sexually hostile workplace claim comes significantly closer to being actionable under these statutes, Evans cannot recover pursuant thereto under either Title VII or the PHRA because Nine West may avail itself of the *Ellerth*/*Faragher* affirmative defense. Accordingly, I will grant defendant's motion for summary judgment with respect to each count of plaintiff's complaint.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

KIMBERLEE EVANS, Plaintiff,	:	
v.	:	CIVIL ACTION
	:	NO. 00-4805
NINE WEST GROUP, INC., Defendant.	:	

Order

And now, this ____ day of April, 2002, upon consideration of defendant's motion for summary judgment (Doc. # 18), plaintiffs' memorandum in opposition thereto (Doc. # 22) and defendants' reply memorandum thereto (Doc. # 24), it is hereby ORDERED that defendant's motion is GRANTED. Judgment is entered in favor of defendant Nine West Group, Inc. and against plaintiff, Kimberlee Evans.

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William H. Yohn, Jr., Judge